

WEINER LAW GROUP^{LLP}



629 Parsippany Road
Parsippany, New Jersey 07054
P (973) 403-1100 F (973) 403-0010
www.weiner.law

LAWRENCE M. BERKELEY
Member of the Firm

lmberkeley@weiner.law

June 18, 2021

Via Electronic Filing

Clerk, United States District Court
Clarkson S. Fisher Building
& U.S. Courthouse
402 East State Street
Trenton, NJ 08608

Re: Van Note, Kim & Eugene v. Harvia US, Inc., et al.
Docket No.: SOM-L-676-21
Our File No.: COST-139

Dear Sir/Madam:

Enclosed please find Petition for Removal on behalf of Defendant, Costco Wholesale Corporation. Please file same. By copy of this letter, we are advising our adversary of this Petition.

Thank you for your courtesy in this regard.

Respectfully submitted,

LAWRENCE M. BERKELEY
A Member of the Firm

LMB/yo
Enclosures.

cc: Clerk, Superior Court of New Jersey, Somerset County (via electronic filing)
Alex Lyubarsky, Esq. (via email only – dalyubarsky@wilentz.com)

WEINER LAW GROUP LLP

Lawrence M. Berkeley

Attorney ID No: 035971991

629 Parsippany Road

Parsippany, New Jersey 07054

Telephone (973) 403-1100

LMBerkeley@weiner.law

Attorneys for **Defendant, Costco Wholesale Corporation**

Our File No. COST-139

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**KIM VAN NOTE and EUGENE VAN
NOTE, her husband,**

Plaintiff

vs.

**HARVIA US INC., ALMOST HEAVEN
SAUNAS LLC, AHS LLC, COSTCO
WHOLESALE CORPORATION, JOHN
DOES 1-20 (fictitious names), ABC
CORP. 1-20 (fictitious names),**

Defendants.

CIVIL ACTION NO.:

PETITION FOR REMOVAL

Petitioner, Costco Wholesale Corporation, by its attorneys, WEINER LAW GROUP LLP, respectfully petitions the United States District Court for the District of New Jersey as follows:

1. This case was commenced on May 12, 2021 in the Superior Court of New Jersey, Law Division, Somerset County. Suit is identified in the Superior Court as Van Note, Kim v. Harvia US Inc., et al., Docket No. SOM-L-676-21. (See Exhibit A).

2. Costco Wholesale Corporation first received a copy of the Complaint on June 2,

2021 when Plaintiffs caused a copy of the Complaint to be personally served on an authorized representative of Costco Wholesale Corporation. (See Exhibit B).

3. The filing of this Petition for Removal is timely because it is filed within thirty days of the date Costco Wholesale Corporation first received notice of the lawsuit.

4. Plaintiffs' Complaint in the Superior Court of New Jersey, Law Division, Somerset County, asserts damages of a non-specified amount. Plaintiffs, allegedly sustained injuries caused by a defective product. As such, Defendant Costco Wholesale Corporation believes the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. Costco Wholesale Corporation is informed and believes that Plaintiffs are individual citizens of the State of New Jersey. Defendant/petitioner, Costco Wholesale Corporation, is a Washington corporation and its principal place of business is 999 Lake Drive, Issaquah, Washington 98027. Therefore, complete diversity exists among the parties.

6. Upon information and belief, co-defendant Harvia US Inc., ("HUS") is a foreign corporation that is domiciled in Muurame, Finland, and that is where its principal place of business is located. (See Exhibit C). To date, co-defendant HUS has not filed an Answer to the Complaint, no appearance has been entered, and the undersigned has been unable to otherwise identify counsel for HUS in an effort to obtain HUS's consent for the removal of this matter to federal court. Costco Wholesale Corporation currently does not have the ability to obtain consent from HUS.

7. Upon information and belief, co-defendant Almost Heaven Saunas, ("Almost Heaven") is a Michigan corporation with its principal place of business located at 11261 James Street, Holland, MI 49424. To date, co-defendant Almost Heaven has not filed an Answer to the Complaint, no appearance has been entered, and the undersigned has been unable to otherwise identify counsel for Almost Heaven in an effort to obtain Almost Heaven's consent for the removal of this matter to federal court. Costco Wholesale Corporation currently does not have the ability to

obtain consent from Almost Heaven. (See Exhibit D).

8. Upon information and belief, co-defendant AHS, LLC, (“AHS”) is a Michigan corporation with its principal place of business located at 25 W. 8th Street, Holland, Michigan 49423. To date, co-defendant AHS has not filed an Answer to the Complaint, no appearance has been entered, and the undersigned has been unable to otherwise identify counsel for AHS in an effort to obtain AHS’s consent for the removal of this matter to federal court. Costco Wholesale Corporation currently does not have the ability to obtain consent from AHS. (See Exhibit E).

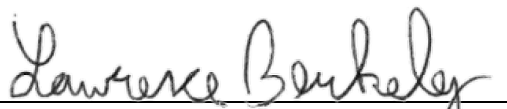
9. In Lewis v. Rego Co., 757 F.2d 66 (3d Cir. 1985), the Third Circuit held that stating “no entry of appearance has yet been made on behalf of [defendant]” is sufficient to bring it within the non-service exception to the requirement to obtain consent from all defendants prior to seeking removal. Lewis v. Rego Co., 757 F.2d 66, 68–69 (3d Cir. 1985).

10. Accordingly, this action is removable to this Court pursuant to 28 U.S.C. § 1441.

WHEREFORE, Petitioner, Costco Wholesale Corporation, Defendant in the action described herein, which is currently pending in the Superior Court of the State of New Jersey, Law Division, Somerset County, Docket No. SOM-L-676-21, prays that this action be removed therefrom to this Court.

WEINER LAW GROUP LLP
Attorney for Defendant, Costco Wholesale Corp.

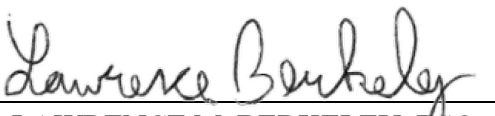
Dated: June 18, 2021

BY: 
LAWRENCE M. BERKELEY, ESQ.
(LMB-7706)

I certify that a true copy of the Summons and Complaint filed in the Superior Court of the State of New Jersey, County of Somerset, is annexed hereto as Exhibit A. The affidavit of service is annexed hereto as Exhibit B. Information regarding the principal place of business for HUS, Almost Heaven, and AUS are annexed hereto as Exhibit C, D, and E.

WEINER LAW GROUP LLP
Attorney for Defendant, Costco Wholesale Corp.

Dated: June 18, 2021

BY: 
LAWRENCE M. BERKELEY, ESQ.
(LMB-7706)